

ECONOMIC DEVELOPMENT & RENEWABLE ENERGY STRATEGIES COMMITTEE
November 9, 2011

Honorable Tim Bynum
Honorable KipuKai Kuali'i
Honorable Nadine K. Nakamura
Honorable JoAnn A. Yukimura
Honorable Dickie Chang
Honorable Jay Furfaro, Ex-Officio Member
Honorable Mel Rapozo, Ex-Officio Member

Minutes of the October 12, 2011 Economic Development & Renewable Energy Strategies Committee.

The Committee proceeded on its agenda item as follows:

Mr. Chang: Thank you madame clerk. Is there any written testimony?

Mr. Chang: Do we have any registered speakers?

Ms. Laureta: No registered speakers.

Mr. Chang: Thank you very much. I'm going to suspend the rules. Any speakers in the audience? Please. Mr. Bosshard. There being no objections, the rules were suspended.

KURT BOSSHARD, KAPA'A SOLAR: Thank you Councilman Chang and Council people, Chair...I got the thank yous out of the way.

Mr. Chang: Why don't you...

Mr. Bosshard: Kurt Bosshard from Kapa'a Solar. I've been here several times and I appreciate the opportunity to appear in front of you once again. I think probably the only thing that's new in the last couple of weeks since I last appeared was, I happened to be watching Ho'ike the other night and saw that the Planning Department had introduced a proposed ordinance having to do with having solar become a permitted use on agricultural land under the same circumstances as the State now. The State handles it where a use permit is not necessary for solar projects on agricultural land. The preamble to that ordinance kind of sums it up in terms of how we got to where we, I thought we were before I first appeared in front of this body which was that the County had wanted to promote solar as a kind of a preferred alternative energy source because it doesn't impact County services and it's a clean manner of producing energy. But the drafting of the proposed tax ordinance has the opposite effect. That is what I've been demonstrating to you. I don't think any of my testimony has really been controverted. I think Mr. Hunt from the tax office actually acknowledged that under his proposed ordinance, Kapa'a Solar or private solar operations were probably being treated unfairly. If the purpose of the taxation is to have a property owner pay for what his impact is from his operation, then it should be obvious that raising my taxes by ten or twenty times, or whatever that number comes from where it was before I built the project, is unfair because solar project doesn't have any impact on County services. So what is the rationale for jacking up the taxes ten or twenty times for that property? I guess the excuse was originally -- well it's a use permit so it's an industrial use so the devil makes us do it, we just have to do it because it's a use permit, doesn't have anything to do with the services provided. So my purpose has been to point that out that it is discriminatory as to solar and presently I don't have any idea; the tax office must have redrafted this thing or had some more input because I think Mr. Hunt did acknowledge that it was working unfairly towards the solar industry when he testified previously. So in terms of whether you want to offer incentives or not, you're really not giving Kapa'a Solar that great of an incentive. The tax is being, as they are today which I'm more than happy to pay or some reasonable increase just for, to satisfy whatever the concerns are of the public that we're not getting some kind of unfair treatment. But as it's drafted it's not doing that. I think that it's fair to put solar into a different category than biomass and alike because we do not impact County services, County expense, and therefore the tax is inappropriate.

Mr. Chang: Mr. Bosshard, excuse me I beg your pardon, your first three minutes has expired but please go ahead and continue.

Mr. Bosshard: It gets to be even more dicey when you call it industrial and to some extent certain of the, of what's been expressed during these proceedings has been contradictory to what's going on with the Planning Department where they are indicating the virtues of solar and putting it in a different category itself in terms of permitting. Other than that I appreciate that you have listened to me all these many times.

Mr. Chang: Thank you very much Mr. Bosshard for your testimony. Does anyone have questions here? Council Vice Chair Yukimura go ahead please.

Ms. Yukimura: Yes. You know your point about not using County services, you said there was danger of fire so that if there was a fire you would need fire services right?

Mr. Bosshard: I have those already, yes, I would continue to need them. There would be no extra use of fire services and I think my previous testimony was that I am minimizing fire threat. So actually the project itself reduces what the County's obligations would be.

Ms. Yukimura: But we're not doing that much of a fine tune thing in terms of real property taxes. We're not judging, assessing every piece of property by how much services they need. We can do kind of some broad brush. But I mean, the valuation, I mean we could say for example biomass and hydro are more firm power than solar and therefore they'd be deserve more standing. If we start doing that it gets too complex to be useful in terms of real property tax which is a value, a valuation tax. So I mean, you can use those rationale to a certain amount but if you put that system of evaluation on ag property versus industrial property versus residential property, at a certain point it's not useful because within certain categories different uses have different service needs. We're not, that's even the criteria for real property taxes as I understand it. By law, it's an ad valorem tax.

Mr. Bosshard: Well the Planning Department is treating it separately. They're recognizing its value and saying - we want to go out of our way and make an ordinance that promotes it.

Ms. Yukimura: Right.

Mr. Bosshard: That's what this, that's what this tax bill is supposedly was about. So if you change the name and say we can't deal with it, it's

all industrial and so just charge them at industrial rate, that's going to be your decision. I'm hoping that it would be in a minority.

Ms. Yukimura: I'm not even saying that. I'm just asking about your proposed measurement criteria. And so I think we're all looking to change or we're looking to give some incentive and be fair and we're all giving inputs into how we do that. I hear what you're saying and I'm asking some questions about your point about County services, that's all.

Mr. Bosshard: I think it's pretty obvious that I don't add to any County services including fire.

Ms. Yukimura: Okay. But I'm not sure that that's the only criteria for ad valorem taxes. So thank you.

Mr. Chang: Thank you Vice Chair. Any other questions?
No further questions?

Mr. Rapozo: I do, I'm not a Committee Member.

Mr. Chang: Go ahead please Councilmember Rapozo.

Mr. Rapozo: I guess the question, Kurt, is in the context of the discussion that Ms. Yukimura had, and this is what I'm getting from you, is that the impacts of your ag parcel hasn't increased in proportion to your tax increase. And I think that's the issue you're making, is that it's a fairness issue and that in fact if property tax should be based on services and impacts to the community, to the tax payer, then if you change that that it should be some kind of...there should be I guess, I don't know how what you attorneys call it, but I know there's a term you guys use when you pull numbers out of the sky. Um, I forget what it is.

Ms. Nakamura: Nexus.

Mr. Rapozo: Yes. There's got to be a reasonable nexus. You must be married to an attorney. But that's the word I was actually trying to find. There's got to be a nexus to the change. And I think that's the point that you're trying to make, is that from prior to constructing anything on your property you paid "x" dollars or you were assessed "x" amount, and then with the project you know, what was the additional impacts or burden to the services that would warrant such a dramatic impact. Is that...

Mr. Bosshard: That is correct. I think the only, well the Farm Bureau's testimony had to do with – we don't want them paying less than us.

I mean, the County shouldn't lose revenues as a result of these things being built on these properties. I'm not asking for that. I don't mind even a modest increase. The most complicated difficult thing is if you leave it as an industrial and then we argue, and then I have, and the tax office is put in the position of, where there aren't any comparables to, putting me on the same level as the KIUC power plant which is where I stand today.

Mr. Rapozo:

Thank you. Thank you Mr. Chair.

Mr. Chang: Thank you very much Councilmember Rapozo. Council Vice Chair Yukimura.

Ms. Yukimura: So if you were given the alternative of an in lieu tax, is that something that would address your needs as assuming the percentage of income would be a reasonable one?

Mr. Bosshard:

Of course.

Ms. Yukimura:

Okay.

Mr. Bosshard: But I don't, I don't think that is an easy treatment. Because I think that the impact on services, when you said a flat rate then you really are saying that the biomass facility with their factory and their workers and water needs and all of that stuff, I'm on par with them. I don't believe that my operation is on a par with that kind of an operation.

Ms. Yukimura: But you know we're really using, I mean the loss is that property is to be valued according to value not according to service needs. So that's what we're trying to determine but we're giving you an alternative, we're considering giving an alternative to the valuation process by this income process that is already being applied to utilities.

Mr. Bosshard: I would probably, the amount of percentage that you would come up with I would probably continue slogging it out with the tax office for years on the industrial issue. It would probably come down to that. It probably wouldn't be a benefit to me because the percentage would probably be higher than what my land value really is even at an industrial minus 50%. I'd probably still fight it out with them because the comparables they're using are bogus.

Ms. Yukimura: So you're saying that you would choose the land valuation process rather than the income in lieu process?

Mr. Bosshard: Probably. Because I think the percentage you'd set would be too high.

Ms. Yukimura: Okay. So that's speculative until we set a...

Mr. Bosshard: I've been around for a while, I've got my opinions and I think you'd probably set it high.

Ms. Yukimura: Okay. Thank you very much.

Mr. Chang: Any other Councilmembers? If not, I have a question for you Mr. Bosshard. So your land is approximately 40 acres or so?

Mr. Bosshard: That I'm leasing, yes.

Mr. Chang: So the last testimony you mentioned your solar farm is on about five acres or so?

Mr. Bosshard: It's fenced about five but the panels are over a little less than four.

Mr. Chang: And you have livestock roaming around in 40 acres.

Mr. Bosshard: Yes.

Mr. Chang: Is any part of the, do you see any part of that acreage relying on anything as far as County services?

Mr. Bosshard: Well...

Mr. Chang: Down the road or in the future? Would any part of that require any part of...

Mr. Bosshard: If houses were to be built there I guess you could say that the normal County services that accompany a residential usage would apply.

Mr. Chang: So...

Mr. Bosshard: Right now I don't have houses but it's possible.

Mr. Chang: So is that, that's a thought or that's something that might come down the road? Is it zoned for housing?

Mr. Bosshard: There's a proposed subdivision for the property that would allow a certain amount of houses. Probably one for every three acres or so, four acres, five acres, depends on whether this future subdivision goes through or not, which I don't know.

Mr. Chang: So down the line it would require some amount of County services?

Mr. Bosshard: Yes.

Mr. Chang: Okay. You know another question and you may have answered this but I've been looking at your testimonies that you've provided with us. When you had your plan and you had your vision and you talked to investors and the people that want to make this happen which we're glad you did, did you ever approach the, just refresh my memory I'm not sure, did you ever approach the tax office to find out – how am I going to get taxed down stream? I mean, did we realize what the difference was between industrial or agriculture or are they doing what they're doing as far as assessing your taxes based on under ground that four acres or so? Or did they, the 40 acres, I mean did we come to any kind of conclusion about what the ramifications might be a year after?

Mr. Bosshard: No conclusion. All that I knew was that there was a draft bill that had been requested and that this was going to be entitled, something that would be an incentive to me doing the project, but no details when the construction was just completed.

Mr. Chang: Okay. Because I knew at one point you had mentioned and correct me if I'm wrong, it's kind of like you don't have any regrets going forward with what you did and you also said something...it's, I can be right to be wrong...

Mr. Bosshard: No. You guys are going to be right in the end. You represent the community. I'm just giving you my opinion so I reserve the right to be wrong. In other words I'm not going to take offense depending what you do with my situation. I appreciate the opportunity to tell you this is my perspective and then you'll make the decision and you'll say what's right.

Mr. Chang: And I totally understand that. But I just, I guess I'm thinking about some sort of a win-win situation because I hate for you to have problems or battles with the Tax Department for years to come when hopefully we can come to a good solution. You're the new guy, you're the first for Kaua'i, and

people are following you thereafter. In my testimony that I had mentioned earlier as the Chair of this Committee, when we read in the front page of the newspaper in bold print of Kapa'a Solar great news, we get all this feedback from the neighbor island people, then Kikiaola, then A & B, then Po'ipū Solar, which I'm very troubled or concerned because Jodi Allione and Teddy Blake and people - they're not here. We hoped to hear something from KIUC, they had previous engagements, but it seems to me that I don't want to lose any kind of momentum to discourage people that want to help us. But nobody is around. I'm baffled.

Mr. Bosshard: Well there's a reason why nobody is around.

Mr. Chang: Well I know...

Mr. Bosshard: That's because I'm the, may I?

Mr. Chang: Yes you may.

Mr. Bosshard: Some of what was discussed in the prior hearings was – well we think we already got people hooked, so do we really need to incentivize this? And, there may be other people that are hooked that have expressed interest, solid interest, it may happen. But I'm the only “sucker” that got landed, the only fish that's in the boat right now. That's why I'm the only one that's here. Everybody else is just looking at the community leaders and seeing whether they're really committed to what has transpired over the last 10 or 20 years where everybody said we want these types of projects and we're willing to support them. Then the Feds came through and the States came through with their contributions and now it's at the County level and I think it does send a negative message to people that are looking at this when you say – we got these guys hooked already so now we can set the hook and we don't have to help them, or recognize that we want this stuff of that we're all in. So I do think that does send a negative message because that's just what investors are looking at, is, can I trust the people for what their words were for all these years leading up to where I'm just about ready to jump over the cliff and put all this money into this type of project.

Mr. Chang: I understand.

Mr. Bosshard: Yes. So I think you do get a benefit out of treating Kapa'a Solar favorably. It's not about the money. It's about the message you're sending because you're not giving up any money because I'm going to pay more tax than that land was used for before. You're going to get, the County is going to get its money one way or another. You want more money? I'll pay it.

Mr. Chang: But you also acknowledged that you're going to have average yearly gross revenues upwards to approximately \$360,000.00?

Mr. Bosshard: That is correct.

Mr. Chang: So you're going to be making some money also? Hopefully.

Mr. Bosshard: When do I make it? I've got \$5 million in, plus, \$5.3 million in. What does \$360,000.00 do? I have my overhead, my expenses. I'm happy with the, that the project is producing at a level somewhat greater than what was represented. I think I'm probably going to produce 10% more power than what was the contractor had indicated. But that's not, you got to get paid back for what you got in it. Meanwhile, obviously people are going to be looking at my system to see what the durability is, how much maintenance and repairs I have each year. Just because I'm grossing a certain number doesn't have anything to do with what the outcome is as to whether it's a good investment or not. So I said that I would be upfront about whatever was going on with the project, I share with you what the gross revenues are, I don't, so that you do know and you can make your decision.

Mr. Chang: I understand.

Mr. Bosshard: But...

Mr. Chang: So when you had your investors and you initially had your game plan...

Mr. Bosshard: I'm the investor. The only one.

Mr. Chang: Okay.

Mr. Bosshard: It's my project.

Mr. Chang: Sole investor?

Mr. Bosshard: Sole investor.

Mr. Chang: Okay, thank you. Councilmember Rapozo and then Mr. Chair.

Mr. Rapozo: I just wanted to make a comment about your, you have the right to be wrong and at the end of the day four votes will make it right. I remember early in my career I was told – four makes it right even if it's not correct. Words of wisdom from a very prominent politician that is no longer on this Council, so you can go figure it out. But I guess, and I hope you don't take this in

the wrong way Kurt is, our job here is not to try to create a bill that's going to work for you. Because what you're doing is completely different than what Po'ipū or KIUC or Anahola Hawaiian Homes or whoever else is out there, it's entirely different. So I guess for me, my concern is – how do we craft a bill that's going to be fair to all? We listen to Kurt so we're going to go tweak now because we got to make sure it works for Kurt, and then we hear from Po'ipū, well now we got to go tweak here. I think if you hear the testimony from all the different people that are considering entering in this industry, they all have some concerns about this bill. I mean we heard from KIUC this morning very briefly and I do want to say Mr. Chair that they were not able to come back. I did, I'm not on the Committee, but I did inform them that I'm hoping that this could get deferred so we could submit questions over to KIUC as far as capacity and so forth. But I guess my point is, it needs to be set up in a way that the taxing system is fair and it's, there's got to be some kind of nexus. There's got to be some kind of connection to what it does. Whether or not you have a home on it you don't change your taxes because you have two homes on a lot, you pay based on what your house was zoned and used for. I thank you for this testimony with the included planning bill because I have not even known this was going through Planning. And in it, it basically paints a very strong picture. It pretty much, it's not in synch with what this bill is, there's some major concerns I think in my mind that in fact the Planning Commission is running one way, and this Council may be going down the other way. So I'm kind of concerned with that and I'm going to ask a question that – is it so wrong, I guess, and I'm probably asking the wrong guy, but this is a question that I battle with, is it so wrong to keep it assessed as ag? And if in fact, because you have been very open with your numbers and I appreciate that because everyone else is not open to the numbers, if in fact the, if you were assessed at ag for your project, what would the net impact be to the County?

Mr. Bosshard: You have different ags now, you have: ag dedicated where you pay almost no tax.

Mr. Chang: Right, I'm not talking about ag dedicated.

Mr. Bosshard: Okay well that's what it would probably be in my instance otherwise...

Mr. Chang: Okay.

Mr. Bosshard: But let's go to where it is which is not ag dedicated when the project was built. It's four acres roughly so it's, I think the tax were about \$500.00 a year for those four acres. And then we're running up under the tax assessment I got it was going to be 20 times that, and then through this appeal process I think I'm at 12 times what the County would realize, increase, and 12 time increase is where I stand right now. So factors will change as to any other

parcel, those taxes will go up if the, if there's a division of that land in some fashion. I'm on a lease right now, so if it, if I'm able to buy the land then the assessment will go up because it would be a separate lot. It'll just follow whatever the ag valuation would be.

Mr. Rapozo: Right...

Mr. Bosshard: Which is what I've been trying to promote which I think the Planning Department is trying to promote the idea that this is a kind of farming, not exactly the same as what we're used to, but a kind of farming. And so it should be excluded from certain permitting.

Mr. Rapozo: What would happen if you built your panels on top of chicken coops? What would happen then?

Mr. Bosshard: That's interesting because I asked if I could ag dedicate the parcel if I ran sheep in there. I don't think that tax office knows. Well, no, I think they wouldn't give it to me. I think they wouldn't give it to me.

Mr. Rapozo: Well I don't know because...

Mr. Bosshard: Because they want to call it industrial see? So if I can't ag dedicate it if it's industrial.

Mr. Rapozo: But the land would, at that point, be...

Mr. Bosshard: Ag. It would be ag.

Mr. Rapozo: It would be ag because your (inaudible) would be under your chickens or your ducks or whatever you...

Mr. Bosshard: Yes.

Mr. Rapozo: Or guinea pigs, rabbits, whatever you had under the panels would...and I'm just thinking out loud, Kurt. I'm trying to figure out the jump from industrial, from ag to industrial, what's the basis for that that's number one. And that's what I'm battling with right now.

Mr. Bosshard: Initially they told me it was the fact that I needed a use permit. But that's what jacked it up.

Mr. Rapozo: And if what the Planning Department is contemplating or promoting and proposing gets approved then you don't need a use permit.

Mr. Bosshard: I don't believe so.

Mr. Rapozo: Okay, thank you.

Mr. Chang: Thank you Mr. Rapozo. Council Chair Furfaro.

Chair Furfaro: Thank you. I too am not a Committee Member. But this bill and in fact just get an acknowledgment from the crowd that I appreciated, this bill came through the Committee at the request of the Administration? That's how I understand it. The Planning Department is, they have oversight from the Administration so I'm a little concerned Mr. Chang that we're at this point here where we've got two pieces of legislation that's going to come before the Council from two operating departments who have two different schemes. You should be concerned with that.

Mr. Chang: I agree.

Chair Furfaro: Okay. Kurt in your particular case your ROI, your Return on Investment, you had a \$5 million investment of which you're going to have forecasted revenues of about \$360,000.00 a year. So with your particular investment, your return on investment, was laid out over a period of how many years in your business strategy?

Mr. Bosshard: Well I'm hoping that I'll be, break even within year seven hopefully.

Chair Furfaro: Okay. And for the repair and maintenance on your project you would have a depreciation or replacements schedule that reflects the same as...

Mr. Bosshard: That's, that depreciation is part of the thing that gets you this rapid fairly rapid return because they allow you to depreciate the whole system in the first, however much income you can write it off your income, personal as well as the business income. So this allows you a benefit immediately, there's no strung out 15 year depreciation or five year depreciation, it's all depreciable. That's a huge factor in whether to go forward or not, and which is part of the commitment that the Federal side has made.

Chair Furfaro: I think that's where I was getting at so that schedule is reflected in both the Federal tax breaks and well as the State tax breaks?

Mr. Bosshard:

State tax credits, yes.

Chair Furfaro: Yes, I'm sorry, credits. But it's stretched out over on that so...then also you heard today it seems that when we have the imported ag land piece being blended here, the Planning Department is indicating that, I assume from the power company that in their strategic plan they will not use more than 100 acres of solar. It sounds like we're quickly coming upon that cap right now.

Mr. Bosshard: It appears they might be moving to a greater number than that. That might have been, they'll have to talk for themselves, but I speculate that perhaps what they're seeing from Kapa'a Solar as far as how much penetration that each circuit can handle that they're reading that they can take more solar than what they had previously thought. I know Kapa'a Solar's system is being analyzed on a Statewide basis at least and maybe on a Federal basis in terms of how much penetration solar can safely have into each circuit. So that actually is one of the unique aspects of Kapa'a Solar Project that's providing a benefit to the industry, the utility industry including HECO and others.

Chair Furfaro: Well, Maurice Mascarenas would say – I'm just trying to understand the business strategy behind this. The 100 acres is very clearly in the draft that I'm going to give testimony on Thursday, at the Planning Department regarding the imported ag land. Somewhere these things, we need to somehow be in a little better concert on this and I would hope that the Chair of this Committee, and I did confirm through the Planning office that we probably won't see that bill that you referred to at a minimum of a week, maybe two weeks. But, it seems to me right now we should try to understand all this thinking between the various departments and the assumptions we're going to make from our consultant on the important ag lands to really note what kind of benefits we're going to have. I have a tendency to agree with you on the capital improvements that are pure expense to the developer on this, in particular could be harmful to taxing that until there's a depreciation schedule and we know what your ongoing repair and maintenance is. But, why are we getting that technically involved on a four acre piece of property? It just overwhelms me as a businessman, and yet we have another piece of legislation coming over from another department maybe within a week and a half to two weeks. We'd like to see the rationale behind the Planning Commission on their thinking. But this ROI was, was laid out in a seven year plan as you pursued your tax credits?

Mr. Bosshard: Yes. I have to admit that because I was the person making the decision, that I didn't require all the documentation and the (inaudible) room figures...

Chair Furfaro:

Yes but now you're in front of us...

Mr. Bosshard:

Yes.

Chair Furfaro: And we're the board of directors of the County of Kaua'i and we'd like to know those moving parts as we get to the boardroom to make a decision. But I've said what I've said earlier, it's very particularly concerning for me that for this particular part we'll be talking about taxing even the initial capital investment on this. But, being the sole proprietor of this venture, you just have to feel comfortable inside. You have to have a gut feeling that you did the right math, but we're a little different here as we're looking at this legislation proposed by request from the Administration and what's coming to us in another week and a half. So I just want to convey to the Chairman of this Committee, you know, it would probably be best to get us to a deferral today.

Mr. Bosshard: I understand. I know you want to do it right and I'm all for that. I'm not in any hurry myself, I'm going to be around. I'm not going anywhere. You just have to keep listening...

Chair Furfaro: I'm glad to hear that, but it's not about doing this right, it's about having all of the information to make the best decision. Obviously we don't have a piece that the Planning Department has acted on. And so it would be prudent for us to have all that information on these two bills. It would be very appropriate for us to hear the Planning concerns as well. Thank you Mr. Chair.

Mr. Chang: Thank you Chairman. Councilmember Kualii.

Mr. Kualii: Aloha, mahalo. Just a quick question. I was looking over my notes and I remember your comments earlier where you said you're not opposed to paying a little more. It sounds like, and you did say that this is a kind of farming, and you're not necessarily aren't arguing that it should stay as agriculture, you're just arguing that it should not be industrial, is that correct?

Mr. Bosshard: If there's a reasonable "in-between" I'm okay with that.

Mr. Kualii: So when I look at the old rates, the difference between building and land, for agriculture it's \$6.90 and for industrial it's \$6.90 so it's the same. Then the building is where there's the change: \$4.25 agriculture; \$7.90 industrial. So if there was a middle, a new category, say "renewable energy commercial," and if it was at some rate between agriculture and industrial, you would be okay with that?

Mr. Bosshard: I'd like to call it "renewable energy agriculture" rather than industrial.

Mr. Kuali'i: You would like to but we heard from the ag folks, the Farmers Bureau, and they said it's not...

Mr. Bosshard: Well...

Mr. Kuali'i: There's that argument out there.

Mr. Bosshard: Yes.

Mr. Kuali'i: We could probably, I don't know, I don't want to speculate where the Committee would come (inaudible) but it wouldn't be agreement. I mean, as far as what is agriculture and what is farming.

Mr. Bosshard: Farming is...

Mr. Kuali'i: But you are creating a product, a service, a product, and then selling it to the public through KIUC. So if you're...

Mr. Bosshard: Yes but I'd be selling cows too, if I had cows I'd sell cows.

Mr. Kuali'i: Yes.

Mr. Bosshard: It's all commercial.

Mr. Kuali'i: Yes, but it's, yes...

Mr. Bosshard: And farmers do sell them (inaudible).

Mr. Kuali'i: So it's agricultural commercial versus renewable energy commercial, it's all commercial.

Mr. Bosshard: There you go.

Mr. Kuali'i: So the rate between ag and industrial would be \$6.08, right in the middle. And I guess it's a matter of you looking at your numbers and saying – are you still making money and able to cover your overhead and pay down your loan and all of that; business sense. But hopefully it makes sense because I did hear you say – it doesn't necessarily mean it has to be agriculture, you just don't see it being industrial.

Mr. Bosshard: Correct.

Mr. Kuali'i: Thank you.

Mr. Chang: Thank you Councilmember Kuali'i.
Councilmember Bynum.

Mr. Bynum: (Inaudible) I guess in doing the math you said that ag was about \$500.00...I'm sorry, at ag it was about \$500.00 for the four acres, and then it went up 20 times so my math is that's like \$10,000.00, then it went back down after your appeal to 12 times, and that's like \$6,000.00 right? Okay, that's it.

Mr. Chang: Any further questions for Mr. Bosshard? If not, Mr. Bosshard thank you as always for your testimony. Anyone else in the audience would like to testify on this bill? If not, we'll call the meeting back to order. Councilmembers any discussion? Councilmember Bynum.

The meeting was called back to order, and proceeded as follows:

Mr. Bynum: (Inaudible)

Mr. Chang: And I do understand that we have some proposed amendments so why don't we...has that been circulated? Would you like to go first Mr. Bynum and explain your amendment.

Mr. Bynum: (Inaudible)

Mr. Chang: Please.

Mr. Bynum: As I mentioned last time we met, I do feel a sense of urgency about this bill because until we make this clear there are other projects that...

Mr. Chang: Mr. Bynum excuse me, I need to get a motion to amend.

Ms. Yukimura: No, approve.

Mr. Chang: Approve, I beg your pardon.

Mr. Bynum moved for approval of Bill No. 2415, seconded by Ms. Yukimura.

Mr. Chang: Go ahead Mr. Bynum.

Mr. Bynum: I was going to give an explanation and then make a motion to amend. If the staff could circulate this amendment while I'm speaking that would be good.

Mr. Chang: You know, Councilmember Bynum, excuse me for one second. Am I being requested right now to suspend the rules once again because our Planning Director has come in? Maybe he can explain...

Chair Furfaro: Mr. Chang, that is your call.

Mr. Chang: Okay.

Chair Furfaro: If you want the Planning Department to speak today, then you can stop the proceedings and suspend the rules to hear from them.

Mr. Chang: Okay.

Chair Furfaro: That's your choice.

Mr. Chang: Okay. First of all, Councilmember Bynum I apologize for interrupting, why don't you go ahead and we'll figure out whether we want to bring him up or not.

Ms. Yukimura: Can I move to amend?

Mr. Bynum: When I get there. You want me to proceed?

Mr. Chang: Please.

Mr. Bynum: Okay. So as I said, personally I feel a sense of urgency about this bill because until we give this clarity there are people seeking financing for projects that until they have this clarity they're not going to move ahead. So I appreciate the Administration for separating this bill out from our larger tax bill, I appreciate the County Attorney for turning around questions quickly, and I assume because they feel a sense of urgency as well. After our discussion last week, I've crafted an amendment with I think we discussed this last time and so because of the planning bill and my clear understanding and input from the County Attorney about H.R.S., one of the provisions I had suggested previously is if any project was on A, more than 10% was on A and B, that they would not get an exemption. Some of the concern from Councilmembers and from the County Attorney was that really was a Planning issue, and then I was able to understand that when the Legislature allowed on B and C lands like an extension, they did it

with restrictions. I believe the Planning, our planning bill are following up on that lead from the Legislature although the Planning Director is here. So I don't know that those issues are related, and I took them out of this amendment because I think they're being addressed on the Planning side as opposed to needing to do it in the Tax Code. The other thing that this amendment does is similar to what we talked about before of having an alternative to the taxation. There was a question about whether the terminology "in lieu fee" was appropriate and so the terminology here is: exemption by commutation. I looked up commutation because I thought of that as, you commute a death sentence right in the legal frame, and according to Merriam Webster it's: a replacement; a substitution of one form of payment or charge for another. And so, what this amendment suggests is that someone who has an alternative energy project can make a choice near the beginning of that project to either go with the Administration's proposal of having the land classified as industrial and exempted by 50%, or pay, and I just said it, an exemption by commutation at the rate of 1%. It also adds some language just to make clarity about how that process, applying for that process would happen and that the applicant who chose that alternative would have to provide information similar to their GE Tax about what gross profits are and do that by the 31st of the year and they could select that option after the first full year of productivity. Then once that selection is made it would be that for the life of the project. I think the...

Mr. Chang: Councilmember Bynum, just for one second, just for clarity for those that are out there following along, we are on page 4 of your amendment?

Mr. Bynum: Right. The first, on page 1 it adds language that says you chose either this or this.

Mr. Chang: Okay.

Mr. Bynum: And then on page 4 it gets more specific about the application process you know. It has definitions of gross income, and definition of exemption by commutation.

Mr. Chang: Okay, I understand. I'm following you now.

Mr. Bynum: So this is with, in consultation with the County Attorney's Office. So the advantages, and you know we've learned together that not all alternative energy projects are created equal, and this doesn't say what type of project it is. It gives any project one of two alternative. It's pretty clear what a large scale alternative would choose, and for solar the advantage would be predictability throughout the life of the project. You know, you're going to pay, and then the fee that you pay or the exemption by commutation that you pay, fluctuates with the productivity of the facility. If it tails off in the later years or there's a bad

year, the property tax would be less. But most importantly it's no longer tied to assessed values which may go over the 20 year life of the project.

I also felt from the colleagues here that there was a general feel that we wanted to provide a good incentive, that that was very much in our best interest. And so my initial proposal was 1.5%, I lowered that to 1%. So if we use Mr. Bosshard's math a minute ago, at \$360,000.00 it would be \$3,600.00 or less than the current assessment he's received after...And after the solar folks that I've talked to, they like the productivity, the predictability, and having that option. So I'd ask the colleagues to consider this. I think the Planning issues really don't impact this bill, I could be wrong, and it's great to have Mike here.

Mr. Chang: And, if I can, thank you for that statement because what I believe I want to do now, after your...first of all, does anybody, members have any questions regarding Councilmember Bynum's amendment? Proposed amendment? Okay, if not, if I can, I'm going to suspend the rules because whether it's pertinent or not I think we should hear from the Planning Director. Mr. Planning Director did you want to tell us a little bit about that previous meeting? And also, I think you got here from the start of Councilmember Bynum's testimony, so why don't you introduce yourself and I'm going to ask a quick question.

There being no objections, the rules were suspended.

MIKE DAHILIG, PLANNING DIRECTOR: Good afternoon Councilmember Chang, Mike Dahilig, Planning Director.

Mr. Chang: First of all, Mike, did you hear Councilmember Bynum's explanation...

Mr. Dahilig: In settling down I did catch some of it, but I don't think I can say I proficiently understand, I still got to read through it. But...

Mr. Bynum: Stick with the Planning issue.

Mr. Dahilig: Okay. What I did bring over I did hand off to Council staff, a copy of ZA, Zoning Amendment 2012-2. It was approved by the Planning Commission back in August, I'm sorry, October 25. We're currently in the process of transmitting it, they just got a copy of it, so I just handed it off. And essentially what the Planning Commission's Zoning Amendment was proposing was aligning our CZO with Act 217 that was passed by the Legislature this past year. Specifically, Act 217 made an amendment to Chapter 205 Section 2, and I'm just pulling it up here, Section 2, subsection D-6 and A and B. What the Legislature and the Governor signed off on was the additional allowance of solar energy facilities to

be placed within lands on specifically within the State Ag District where soil is classified as overall productivity rating class B or C and cannot occupy more than 10% of the acreage of the parcel or 20 acres of land, whichever is less.

And so, the department's proposal to the Planning Commission was an attempt to align the State Law with the County Code for efficiency purposes. Now, what the intent behind our staff report was not to make the determination on what constitutes an agricultural use. Rather it was meant to allow certain uses on ag land. I know it's a very, it almost seems like a play on words there, but there was some concern that some questions that the Department was actually making recommendations saying that solar energy facilities is quote-unquote "farming the sun." We try to steer away from that, that analogy of farming the sun, rather saying, look, the State is already allowing it on B, C, D, and E lands, let's go ahead and align the State, the County Code with the State Codes. That was the intent behind the Zoning Amendment that is currently on its, in transit to the Council for consideration.

Chair Furfaro: Excuse me Mr. Chang, I have to...I just wanted to ask the Planning Director one question. If we're this close to these two bills coming in at your initiative and at the Administration's initiative, is it appropriate that we should be within a week's time of trying to understand what we're doing here?

Mr. Dahilig: Maybe if you could clarify further?

Chair Furfaro: Oh sure, I'll put it in the Mayor's words.
What's up with that?

Mr. Dahilig: In terms of the timing?

Chair Furfaro: The timing.

Mr. Dahilig: Yes.

Chair Furfaro: What's up with this?

Mr. Dahilig: Well the Planning Commission just passed it out at the last Planning Commission Meeting and so we're, we have to create the dacie with the transcripts and the minutes, and that's all being processed as we speak. And so that, it wasn't meant as a means to be uncoordinated because we are...

Chair Furfaro: You are absolutely uncoordinated in my opinion here, and I don't vote in this piece. But I want to know about strategic

thinking about energy for this County. You're giving it to me yes, but one word. And I'm very discouraged. Mr. Chang, I have an appointment with the State Procurement Officer, I have to leave.

Mr. Chang: Thank you. We're going to have to do a tape change in a few minutes, but do any members have a question for Planning Director Dahilig? First of all I'm going to acknowledge Councilmember Bynum, then we're going to do a quick tape change, so Councilmember Bynum, question for our Planning Director please.

Mr. Bynum: Mike thanks for being here today.

Mr. Dahilig: Sure.

Mr. Bynum: Congratulations on your appointment to Planning Director.

Mr. Dahilig: Thank you.

Mr. Bynum: Permanent, well as permanent as anything is in County. You know, I understand, I had put in this tax bill a provision that is kind of similar that said – if it's on B or C land, if more than 10% of the project is on B or C land you don't get an exemption. Then I learned about that the Legislature hadn't just not blanketly put in on B and C, but they had put restrictions in on B and C, which were not exactly the same, but similar in nature with the intention I assume, and that's the question part, with the intention of making sure that prime ag isn't used entirely for this purpose, but there's some limitations.

Mr. Dahilig: Yes.

Mr. Bynum: Is that, that's the intention?

Mr. Dahilig: Go ahead, sorry.

Mr. Bynum: Go ahead.

Mr. Dahilig: So based on I guess what had come out of the Legislature is pretty clear that on lands that are D and E and not classified that there is no acreage restriction but the acreage restriction is strictly for B and C and you don't even see A lands even entertained within the, I guess, how the Legislature crafted it. I think that was part of the reasoning also that we didn't want to make a qualified determination that you're again "farming the sun," because there was again a degree of restrictions that would go from what is the worst ag lands all the way up to the A lands; the A lands aren't even allowed as part of this exemption.

Mr. Bynum: Right, and so...

Mr. Chang: Councilmember Bynum, I totally apologize...

Mr. Bynum: It's okay.

Mr. Chang: We do need to make a tape change, so I'm going to do a five minute recess, just a five minute recess. Tape change Mr. Dahilig, we're going to call you back in five minutes. Thank you, my apologies Councilmember Bynum.

There being no objections, the Committee recessed at 2:36 p.m., reconvened at 2:43 p.m., and proceeded as follows:

Mr. Bynum: So I may have already asked this because I lost track, but basically this bill came from the staff of the Planning Department in order to align us with what the Legislature has already done?

Mr. Dahilig: Yes. From an efficiency standpoint, we don't operate on a bubble and we know that trying to convert and become more energy independent is a statewide and a local goal. And in trying to look at how from a permitting standpoint we could be more efficient in processing the regulatory work concerning these projects rather than forcing these projects to go through the normal class 4 use process, that this made a lot more sense to bump it down to an equivalent, would be the equivalent of an over the counter permit.

Mr. Bynum: Okay. I appreciate the initiative, thank you.

Mr. Chang: Any other questions for our Planning Director Dahilig? Council Vice Chair Yukimura.

Ms. Yukimura: Maybe you just said it, but basically you're needing to integrate our Planning laws with the superior quote-unquote State law right?

Mr. Dahilig: Right.

Ms. Yukimura: And so, so it's not so much an Administrative initiative as it is a necessary implementation of State law, or integration of State law?

Mr. Dahilig: I think it's a blend of both because from a standpoint of Administrative administering on our end, that's part of it. It's to, we

have our separate County regime and our own regulatory regime that can operate within the State Code and being more strict or being more liberal depending on how the code is written is within the purview of the lawmakers and the policy makers within the County. But in this particular case, it really is meant as more of an efficiency mechanism versus a large paradigm shift per say from a policy standpoint.

Ms. Yukimura: Okay. Right. And actually, ultimately, the Council is the one who passes the law so it's not yet set.

Mr. Dahilig: Correct.

Ms. Yukimura: It's something that has to come to us. Do you see it as contradictory to the real property tax proposal?

Mr. Dahilig: I, that was a discussion when we were coming up with the language for this particular Zoning Amendment. We weren't operating insular of the initiatives that the Finance Department was working on and there was discussions between us and the Finance Department about normalizing...is there a need to normalize between what is the Planning initiative in Chapter 8 of the County Code and then looking at the Tax Code. They're really, the two things are related but they're independent of each other. Essentially, it wasn't as if there was these two through this clandestine initiative both ended up at the same time here. It was two very discussed measures that were at one point looked at as: how do they marry with each other; how do they (inaudible) with each other; does it make sense for one to go before the other; do you create an omnibus type of situation. What made the most sense is to take the two initiatives separately.

Ms. Yukimura: Okay thank you.

Mr. Chang: Thank you. Any further questions?
Councilmember Kualii.

Mr. Kualii: Aloha and mahalo Mike.

Mr. Dahilig: Aloha.

Mr. Kualii: I haven't had a chance to look at all of this yet. I had one quick question I think.

Mr. Dahilig: Sure.

Mr. Kualii: So, with this class B or C, and not more than 10% of the parcel, what ensures that it stays that way? If it was 100 acres and 10 acres of that was a solar farm and then they sold off 20 of the acres that wasn't in the solar farm and now you have only a total of 80 acres, so now that 10 acres is more than 10%.

Mr. Dahilig: You do bring up a good point and actually that process of subsequently subdividing and creating...you do bring up a good point there. You know, nothing from the State level or even the bill that we're proposing I think addresses that question and maybe that's something that as it gets processed we can talk about.

Mr. Kualii: Okay. Thank you.

Mr. Chang: Councilmember Rapozo.

Mr. Rapozo: Thank you, and thanks Mike for being here. I know earlier that you said that the purpose of the bill was really to bring us in line with the State legislation, but if you read the evaluation and the purpose, there's pretty significant or specific issues that pertain to Kaua'i. I'm not going to take the time to read it because we, the bill hasn't even come to us yet, but I think it's quite clear what the intent was from the Planning Department; it was to really allow solar to be an acceptable use on ag lands. That's just what this is.

Mr. Dahilig: Yes.

Mr. Rapozo: I read A, B, C, D, E, and F, and then if you read the actual draft bill it's quite clear what the purpose was. So yes it does bring us in line with the State as far as the land use districts but it even more specifies the Kaua'i need. So it is really significant for Kaua'i and I think the direction that the Planning Department has decided to take, which I happen to agree with. But as I look at the chart, I think of all of the generally permitted uses and structures, and maybe we got to ask this of real property, but you may know, are there any other uses whether it's aquaculture, diversified agriculture, forestry, grazing, and so forth that we tax at a different use? And if you cannot answer that's fine.

Mr. Dahilig: Yes, I don't know that section of the code well.

Mr. Rapozo: I'm just interested in finding out if in fact we tax a accepted use on ag as a different class.

Ms. Nakamura: Tree farms?

Mr. Rapozo: Tree farms, what do we tax that at? Industrial? Yes, I don't know. Okay, thank you.

Mr. Chang: Thank you Councilmember Rapozo. Any further questions for Planning Director Dahilig? If not, I have a question. Before your meeting regarding this subject matter with the Planning, have you got together with our Finance and the Tax Department? Are we trying to get to, where are we right now? It seems kind of confusing for me right now because where we started off a while back, I mean, are we getting closer to some sort of resolution as to how we should properly be taxing?

Mr. Dahilig: You know, in terms of how to tax, I've never really been involved in any of those discussions in terms of what the Finance Department looks at. I know that they do take in account how to classify land. But how it comes down from a dollars and cents standpoint, we're, my department is usually not involved in those discussions.

Mr. Chang: Okay. I understand. Okay, thank you Mr. Dahilig. Go ahead Councilmember Rapozo.

Mr. Rapozo: But Mike, I guess, would you agree that the Planning Department should be the department that determines what the use will be and not Finance? I mean, wouldn't it be fair to say that that's the task of the Planning Department and the Planning Commission to determine uses, and that in fact if this specific use is of industrial nature then it should be classified that by the Planning Department and not the Finance Department?

Mr. Dahilig: You know, it's hard..I don't have a lot of knowledge in terms of what the Finance Department actually takes into account...

Mr. Rapozo: I'm not asking about Finance, I'm asking about Planning. Isn't it your understanding that the Planning Department should be the department that assigns the use and the permits and the, of any activity on the island. That it should be your department that says – this is ag. This is what you're trying to do with this bill. You're basically, as I'm reading it, saying – this bill wants to allow or say that a solar energy facility would be a permitted use on ag land. Which I interpret that as saying – it's an ag operation. So I mean, my point is this is, I believe that that is the determination that is made by Planning and not Finance.

Mr. Dahilig: Correct.

Mr. Rapozo: I just believe that, and I'm asking, is that what you believe, as far as your department is concerned?

Mr. Dahilig: You know, it's, I hear what you're saying Councilmember and I think what, not to draw down to the specifics of this particular proposal before the Council right now, but it's, sometimes we're in a role to make a call, make a recommendation that says – we now want farming the sun to be considered agricultural. But then in other times we're in a position to say – we want uses that aren't characteristic based on what the label is of the land, but we want it to be allowed on that land. So, ultimately my department is tasked with the responsibility of not only classifying which is, I think, in some ways somewhat of an independent process of then saying – what is allowed on these classifications. There's a lot of areas within the Code that are not necessarily ag uses, but are allowed on ag land. Same as commercial uses that are allowed on residential areas. It's difficult for me to, I guess, simply say that we would be the, I guess, that those two processes that we do, which is classification and then identifying what's allowed on the classifications, would make us the quote-unquote sole determiner of what is allowed; what is the appropriate uses for these lands.

Mr. Rapozo: Well I hate to tell you Mike, that is your sole purpose, by the Charter, that is your sole purpose.

Mr. Dahilig: (Inaudible: I know that)

Mr. Rapozo: I mean, I hate to tell you that. That is your, you are the Planning Director. It's not about, that is your job, that's just what it is. Let me just read real quick, I will read "C" because I think it really hits the intent of the Planning Department. Evaluation is read page 2 of the Planning Department report: The Planning Department further finds that allowing renewable energy facilities within the agriculture district furthers and is consistent with the purposes, standards, and criteria for uses within agricultural lands; renewable energy facilities increase the County's self-sufficiency and agricultural sustainability. I mean I think that is a really powerful paragraph that says – we have now accepted renewable energy facilities as being consistent with the criteria that is being used in agricultural lands. I mean that's a powerful statement. I'm not sure if that's what was intended, but that's what I'm seeing right here. That would tell me that it would be no different than aquaculture, historic sites, and intensive agriculture, orchards, the nurseries, outdoor recreation; I mean that's the same thing. It's like now it's, the intent is to create this facility or create this permitted use so that solar energy facilities will be now an acceptable agricultural use.

Mr. Dahilig: I think when you look at that paragraph, Councilmember, and thank you for pointing that out, when we proposed ZA's from a departmental level, again what is paramount the way that our rules and our Charter are written is that the General...consistency with the General Plan is always the first thing that we take a look at. That is what we have to make sure

that whenever we propose a new ordinance that the ordinance does not steer outside the General Plan. And in reading the sections concerning agricultural lands, but also understanding the other sections of the General Plan that pertain to the need for more socioeconomic activities like renewable energy; that we can marry the two and say from a consistency standpoint with the General Plan that we believe something like this would be, wouldn't be steering away from what the 2000 Plan had envisioned for the County.

Mr. Rapozo:

Okay. Thank you.

Mr. Chang:
question?

Councilmember Yukimura did you have a

Ms. Yukimura: Just wanted to thank the Planning Director for being available today. It's very helpful to have somebody to talk to about this issue which is related to the issue we're discussing. So, I just wanted to say that. Thank you.

Mr. Chang: Thank you. Any other further questions for our Planning Director? If not, Mr. Dahilig, thank you very much for taking the time to explain and present some clarity to our Councilmembers. Thank you very much.

Mr. Dahilig:

Okay, thank you.

Mr. Chang: We're going to call the meeting back to order. Mr. Bynum you did have the floor, and again my thanks for getting some clarity. Go ahead please.

The meeting was called back to order, and proceeded as follows:

Mr. Bynum: As I said earlier, initially what I was trying to achieve (inaudible) by the State Legislature. They didn't just allow on B and C, they allowed it with restrictions and our Planning Department has taken initiative to see that our County ordinances align. So I don't really see that as an issue that impacts this tax bill. And so having said that, I'm going to move to amend as circulated.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Yukimura, and unanimously carried, Bill No. 2415 was amended as circulated (See Attachment #1 hereto.)

Mr. Chang: Was there anyone else, members, that want to introduce any other...did you wish to introduce an amendment Council Vice Chair?

Ms. Yukimura: So, Mr. Chair...

Mr. Chang: Go ahead please.

Ms. Yukimura: I just wanted to, I have here an amendment that would make 2415 retroactive to January 1, 2011. So I move to approve so that we can have a discussion.

Councilmember Yukimura moved to amend Bill No. 2415 as circulated (See Attachment #2 hereto), seconded by Councilmember Bynum.

Mr. Chang: Go ahead please.

Ms. Yukimura: This would just start the effect of Bill No. 2415 to the beginning of this year and I think would assist Mr. Bosshard and maybe others, although I don't know of any other big commercial development because this was, this bill was intended to come sooner than now. I think it helps with the fairness of the bill. I'm proposing that we amend it accordingly.

Mr. Chang: Okay. Does any Councilmembers have any discussion regarding the amendment?

Ms. Yukimura: I don't know, maybe if the Administration has any input? We could see if they do. Anybody?

Mr. Chang: Hold on please.

Ms. Yukimura: If we went...

There being no objections, the rules were suspended.

WALLY REZENTES, JR., DIRECTOR OF DEPARTMENT OF FINANCE:
Good afternoon, Wally Rezentes, Jr., Director of Finance. Is the question if we see any issues with respect to retroactivity?

Ms. Yukimura: Yes.

Mr. Rezentes: We don't.

Ms. Yukimura: Okay. Thank you. Chair?

Mr. Chang: I'm so sorry. Hold on for a second, I'm so sorry. I got a little distracted. Can you repeat what you just said? I'm sorry, I wasn't...

Mr. Rezentes: I believe the question was with respect to a proposed amendment that allowed for the potential retroactivity of the proposed bill. We, the Administration, we do not see a problem with that.

Mr. Chang: You do not...

Mr. Rezentes: No.

Mr. Chang: You do not see...

Mr. Rezentes: Do not.

Mr. Chang: Okay great. Thank you Mr. Rezentes.

Mr. Rezentes: Okay.

Mr. Chang: Thank you Vice Chair. Any other further discussion?

Ms. Yukimura: Councilmember Nakamura.

Mr. Chang: Councilmember Nakamura please.

Ms. Nakamura: So this would give a operator of a solar facility, a commercial alternative energy facility the...would that affect...it's on? Let me move it closer? Is that better? What would be the effect, this would give them a one year, is it one year look at the gross income?

Ms. Yukimura: Well, you know, how the...okay, so everybody needs to be clear that the amendment proposed by Mr. Bynum has this alternative choice right?

Ms. Nakamura: Right.

Ms. Yukimura: Either you go by the real property's conventional process of assessment or you choose an income based approach not unlike the franchise tax for utilities. In this case for this, for the tax year I guess, it would, I mean there may be some rules that the real property tax has to promulgate or else, anyway however they determine to administer it; it would apply to this fiscal year. Right? This tax year? We have the Finance Director, maybe he can.

Mr. Rezentes: I believe that's...you're correct. And basically, it would result in a potential rebate of taxes ultimately, depending on what is passed.

Ms. Yukimura: What the outcome is.

Mr. Rezentes: Right.

Ms. Yukimura: In terms of what choice is made for the method of...

Mr. Rezentes: Or what is ultimately passed. Right? By the Council.

Ms. Yukimura: Right. Right. Yes.

Mr. Chang: Did that clarify your question Councilmember Nakamura?

Ms. Nakamura: That's fine.

Mr. Chang: Okay. Thank you very much Mr. Rezentes. Council Vice Chair Yukimura, can I take the floor for one second?

Ms. Yukimura: Yes.

Mr. Chang: Just one second please.

Ms. Yukimura: Yes, Chair can ask questions.

Mr. Chang: Mr. Bosshard, would you like to come forward and maybe compliment...compliment? Comment on this proposed amendment?

Mr. Bosshard: Kurt Bosshard, Kapa'a Solar. First I'd like to compliment the amendment. That would obviously be helpful to me.

Mr. Chang: Your mic. Thank you.

Mr. Bosshard: I haven't had a chance to really read it through carefully.

Ms. Yukimura: Are you talking about Councilmember Bynum's amendment?

Mr. Bosshard: Bynum's, yes. But I do appreciate that you've offered.

Mr. Chang: That was the question that I had for you.

Mr. Bosshard: That would be helpful. If I can just say, they're, and I haven't had a chance to look through this. It'll take 20 seconds. In determining the area to be assessed at this industrial level under Tim's proposal, I would suggest that we put that it's the area under the panels. Sometimes people have a lease or a permit that expands out but which isn't being used industrially. And so, to avoid that confusion to solar, if there is any, and I haven't read it, that it just be the area where the panels are, if that's necessary. And then if there's any requirement in terms of applying for the exemption to fall under this proposal, that that not be required for the 2011 tax year so that I wouldn't miss the application date if there is something in here that says that I need to apply by a certain date. Just for this year, otherwise...

Mr. Chang: Did you have a response Mr. Bynum?

Mr. Bynum: On your first issue about just the land underneath, this amendment doesn't address that, but I believe the bill does. I'm going by memory right now.

Mr. Bosshard: I don't think it specifically states the panel area. I think it's the area of the use permit which could be broader. Like in our case, we didn't know exactly where we were going to put the panels until we got approval and they moved somewhat. So we had a bigger area to work in and then we located it.

Mr. Bynum: Well not wanting to give any misinformation, that's a question I think we'd have to ask real property. But in terms of the amendment that I have, that has been passed here, it establishes a 1% alternative. But it requires that the facility be in production for one full year, and then make that selection. So I don't know if that answers your question.

Mr. Chang: And if, Mr. Bosshard, excuse me, if I can make a clarification, I am planning to defer this for the next two weeks. So you can hold that question just so that we can clarify so we're not giving out improper, the wrong information. So I'd rather defer it, we can come back, we can address that in the interim.

Mr. Bosshard: Thank you.

Mr. Bynum: Thanks.

Mr. Chang: Councilmember Vice Chair Yukimura I believe you had the floor regarding your amendment.

Ms. Yukimura: Yes. Right. Unless there are any questions, I yield the floor.

Mr. Chang: Any questions from members? No questions. No questions?

Ms. Yukimura: I have a question of you Chair. Now your intention to defer is so that we get some input from KIUC, is that it?

Mr. Chang: My intention to defer, is yes, because I believe that there are some of the members that stated in the past that they were planning to be here. As I mentioned earlier, I don't know where some of these people are that I was expecting to come forward to...

Ms. Yukimura: They might be waiting for the Council Meeting.

Mr. Chang: And I understand that, I understand that.

Ms. Yukimura: I don't know, I mean...

Mr. Chang: For myself personally, I just feel that I need time and the information because I think it's been a little confusing. That's my goal, and that's my recommendation.

Ms. Yukimura: Well I do think there is the issue that KIUC raised that we probably need to look at in terms of a double taxation issue. It appears we might have to more fully understand the implications of my proposal. But if that's your decision to defer I would, I mean that's what would happen. We need to, I mean presumably then at the next Committee Meeting we would act on it and then get it out to the Council for action?

Mr. Chang: Yes.

Ms. Yukimura: Yes. Okay. Thank you.

Mr. Chang: Councilmember Bynum.

Mr. Bynum: I just would, I would encourage us to finish the dialogue and discussion about this agenda item before we...

Mr. Chang: Oh definitely.

Mr. Bynum: Make a decision about deferral.

Mr. Chang: Well, we're going to finish dialogue and then...

Mr. Bynum: Because I'm not clear that that would be necessary. It may be, but I'm not clear at this point. I had really hoped that this would pass out of Committee. I've worked hard on this for several weeks and people have expedited responses in a few incidences. So, let's just see if we can finish those questions today before we make a decision about deferral.

Mr. Chang: Councilmember Rapozo.

Mr. Rapozo: I just want to say, I think you heard Mr. Furfaro request that this matter be deferred because of questions with KIUC. I think I made my request that this matter be deferred because of questions that KIUC is not able to answer today. So I would ask that Mr. Bynum consider those requests as well. I think it's a reasonable request. This is obviously not a time sensitive issue. Two more weeks is not going to cause a problem. And yet, KIUC brought up a very serious issue that I think Ms. Yukimura recognized, is that in fact we may have to get a County Attorney opinion to review that double taxation issue; I think it's a very real one. That is why I had asked KIUC to come back today so we could've had that discussion. They cannot make it today. Obviously, I think to move forward is very premature; that is a serious concern. I don't think anyone on this table is prepared to determine if that's accurate or not. Obviously we require an attempt or a request for a County Attorney's opinion. I would just ask that we, of course have the discussion, but I agree with your assessment that this definitely isn't ready. Especially with the Planning bill issue that just popped up today that we just found out today, anyway, I did. Thank you.

Mr. Chang: Thank you very much Councilmember Rapozo. Any other comments? Questions? Councilmember Bynum.

Mr. Bynum: Okay. I'd hoped to avoid this but...I sent a memo on October 21, and I'm going to read it, it says: KIUC has mentioned that they're planning a solar energy project in Anahola on Hawaiian Home Lands. Under the current tax structure and Bill No. 2415 related commercial alternative energy facilities, would this project be exempt from real property taxes because it's on Hawaiian Home Lands? That's a question. Or would the project be assessed only

the public service utilities company tax or the 1.88. So I've been seeking this information, trying to be proactive.

Ms. Yukimura:

When was this sent?

Mr. Bynum: This was sent to Finance on October 21 with a request for a response by October 31. I haven't received an official response, but I've received some comments. And so, if we defer today we defer. But I believe there is a sense of urgency about this bill. I believe even two weeks could have a significant impact on the future of alternative energy, potentially, probably not but potentially. And so, if there's, as an alternative maybe we could move this to a later part of the agenda because if we can get these answers answered today...but if the majority wants to defer I'm not going to, I'll lose the vote. But I believe people were talking about deferral before we even finished the discussion.

Mr. Chang: Thank you Councilmember Bynum.
Councilmember Yukimura followed by Councilmember Nakamura.

Ms. Yukimura: Well I think as Councilmember Bynum has indicated by his initiative in asking the question to Real Property Tax, the KIUC issue is an issue that needs to be addressed. I think it can be addressed with certain wording. But it is important to have the input from Real Property Tax Division. So, we do need I think to do that and to draft some wording. The fact that the Chair has indicated a request for deferral, you know, indicates that we should also incorporate his concerns in the decision whether or not to defer. To me, there's enough grounds to defer. But I do think it's not that we shouldn't move with all due speed because as we heard from all the solar potential solar developers, certainty is very important to them. Not having clear laws is not useful or not helpful to them, so the sooner we can get a clear law in place the better.

Mr. Chang: Thank you Council Vice Chair.
Councilmember Nakamura.

Ms. Nakamura: Just to add to Councilmember Bynum's list of questions relating to KIUC, it's really KIUC creating a for-profit subsidiary. That's the issue and the double taxation issue at that point. So I guess I would like to get that question answered either by Finance Department or County Attorneys to give us some direction on how we can craft language to avoid double taxation.

Mr. Chang: Thank you very much. Councilmember Kualii. Did you have a question?

Mr. Kualii: No.

Mr. Chang: No questions? Councilmember Rapozo.

Mr. Rapozo: No.

Mr. Chang: Okay. I just wanted to say, it is my intention to defer this. But I just wanted to read something, this was a testimony that was on our consent calendar at 9:00 a.m. this morning, six and a half hours ago. But, just briefly a statement by our Chief Financial Officer Carissa Jonas: to accomplish this, KIUC has formed a new for-profit subsidiary to qualify for Federal and State tax incentives. The subsidiary is necessary because KIUC is a tax exempt cooperative that does not qualify for this (sic) incentives. They all go on to say under this bill, its current form would apply to KIUC's subsidiary. As you know, KIUC as a public utility currently pays the County of Kaua'i a public service company tax of 8, I beg your pardon, 1.885% of revenues in lieu of property taxes. By collecting a similar tax on KIUC's subsidiary, the County will be effectively be double taxing KIUC and its members.

So I just wanted to get that out for the record because this was their testimony. Again, they are not able to be here this afternoon and I feel that it is important that we hear from them. So that would be my intention, is to defer this. I do believe we've gone through this and I appreciate all the work of the Committee Members and all of our members, and I do believe it is time sensitive. But for another two weeks, with what we can get information from our tax office, our attorneys, and everyone else in place, I do believe it's definitely warranted. So that's the direction I'm looking for. Any other discussion here?

Mr. Rapozo: I just have a question. As a non-committee member, and I'm hoping that one of the Committee Members will be requesting a County Attorney's opinion as far as the double taxation issue that was addressed this morning by KIUC.

Mr. Chang: So noted.

Mr. Rapozo: Thank you.

Ms. Yukimura: If you're ready I'll make a motion to defer.

Mr. Chang: Okay, hold on for one fast second. Go ahead
Mr. Bynum.

Mr. Bynum: Mr. Rezentes, did you want to add anything to this discussion?

Mr. Rezentes: (Inaudible)

Mr. Bynum: May I...

Mr. Chang: I was going to...yes. I was going to bring him up but I wanted to ask you since you had your hand up. But I did see him from the side angle.

Mr. Bynum: Okay thanks.

Mr. Chang: Did you have a question or was your request to...

Mr. Bynum: Well I had two things.

Mr. Chang: Why don't you go first and then we'll call Mr. Rezentes up.

Mr. Bynum: Well two things. One is, I'm frustrated, that's pretty obvious. I anticipated this, I heard KIUC when they said it, I talked with KIUC about this issue, I sent over questions in writing, subsequent questions that have gone over and have been answered, so I'm just really frustrated that we didn't have a sense of urgency.

I'm also frustrated that for the last three years, the County Attorney has sat right there and now I don't see a County Attorney in the room. I've spent the last 12 or 15 minutes, well yes, he came in a minute ago, saying – is there a County Attorney here? Staff went out, said – yes they're in the building. So those two things.

I'm frustrated about process that if this had urgency, why these questions didn't get answered and I'm frustrated that the County Attorney is not as available to me as they were the last three years. I miss them being in the room. Sometimes the answer is just a look you know? Like – no, no, it's good, right? It's just a nonverbal communication and since the County Attorney has not been physically present in the room, I think it has on several occasions from my perspective, mired our proceedings. So, thank you for letting me make those comments.

Mr. Chang: You're very welcome, I understand.
Mr. Rezentes, I will suspend the rules.

There being no objections, the rules were suspended.

Mr. Rezentes: Yes. Wally Rezentes, Jr., Director of Finance, again. I just wanted to make clear that it is not the Department of Finance

intention to double tax anyone and that we did have a meeting with KIUC on some other matters. We did talk about their creation of the for-profit entity that allows them access to different types of funds. We believe that it's not a question of the Department of Finance to determine the applicability of the tax; it's really an H.R.S. interpretation. It would be something that... the Public Service Company Tax is the foundation of that is an H.R.S. So our intention is not to double tax KIUC or their, and their for-profit entity. So we would seek the guidance of the County Attorney's Office for that assessment.

Mr. Chang: Council Vice Chair.

Ms. Yukimura: If the profits are attributed, the profits for the for-profit company are attributed to KIUC, then the tax would happen through their franchise tax right?

Mr. Rezentes: The Public Service Company Tax. That's what I believe.

Ms. Yukimura: Yes.

Mr. Rezentes: But, again I'm not an attorney. I would think that the revenue that they derive through the utility would get taxed under the Public Service Company Tax vehicle. The revenue from the for-profit entity would be taxed separately based on whatever the outcome of this bill is and not double. But again, that's just me from the Department of Finance and I think we would need some legal clarity.

Ms. Yukimura: I think we do need the clarity. But to me, if it's wholly owned, such that any property attributed to the for-profit entity is attributed to the utility and the profits from that for-profit entity are attributed to the utility, it's all one assessment through that franchise tax. So that's what we would have to, I mean to me that's a logical way to frame it. But we would have to get some expert advice, and I guess an understanding of how the franchise tax works to make sure that's in fact the case. Then if it isn't, how it's framed and therefore how we would rationalize our policy here. Okay.

Mr. Chang: Thank you Vice Chair. Councilmember Rapozo.

Mr. Rapozo: So Wally, you folks were aware of the concern of KIUC and the double taxation issue?

Mr. Rezentes: Well, we knew that they were creating this other entity.

Mr. Rapozo: Right. Did you folks have a discussion about the double taxation concern?

Mr. Rezendes: I'm not sure if anyone...

Mr. Rapozo: Well I thought that's what you said earlier.

Mr. Rezendes: No, there was talk about the creation of that for-profit entity so that they can derive, find other vehicles to do financing and receive the Federal and State credits.

Mr. Rapozo: So the double taxation issue hadn't been vetted through the County Attorney's Office as of this point right?

Mr. Rezendes: I don't believe so. I do not believe so. I can't speak for them, but I don't believe so.

Mr. Rapozo: Well, the bill came from you right? From your department?

Mr. Rezendes: Yes. But I can't, I don't believe it has been researched by the County Attorney.

Mr. Rapozo: Yes. Okay. Thank you.

Mr. Chang: Thank you. Councilmember Bynum.

Mr. Bynum: So you just said a minute ago that your belief that the County Attorney has to confirm is that the project will be assessed on the Public Services Company Tax?

Mr. Rezendes: I said it was the Department of Finance's intent not to double tax anyone. So how we go about it, how we make sure the laws are in place to accommodate that, that's something that we have to work our way through.

Mr. Bynum: Because that's the question I asked: or would this project be assessed only this tax. Were you aware of this memo?

Mr. Rezendes: I had a lot of memos. I have to go research, I'm not sure. I've been getting a lot of memos.

Mr. Bynum: Well, you know, we have another agenda item today where a memo went over in September and I heard this morning that it had never been seen on the Administration's side. So, between our side and your side we have to track these things closer.

Chair Furfaro: Please, let me make note, we do track them. I have a memorandum that went over, eight questions, they sent back two answers. If you're going to make that statement I just want to make sure we note the staff is doing the best they can.

Mr. Bynum: That was no criticism of staff, they're working really hard.

Chair Furfaro: Thank you. Thank you.

Mr. Chang: Are you done Councilmember Bynum? Any other questions? Comments?

Mr. Rapozo: I have a question.

Mr. Chang: Go ahead please.

Mr. Rapozo: I don't know, Wally, if you know this answer or not, in the discussions with KIUC, because how I understand it is that they pay their 1.885 I guess it is whatever that in lieu fee is, or in lieu tax. They pay it based on all of the energy that is sold to the County?

Mr. Rezentes: Their annual gross revenues.

Mr. Rapozo: Correct. So they, at the end of the year they, whatever they've sold island wide, they pay 1.885%?

Mr. Rezentes: Correct.

Mr. Rapozo: Their concern is, they're going to pay that 1.88% of their in lieu fee for the island for the year. But, if this bill passes they're also going to be charged 1% off of the generated solar revenue that is sold. So, it is going to be double taxes.

Mr. Rezentes: Well, again, that wasn't the intent of the proposed bill.

Mr. Rapozo: Oh, and I understand.

Mr. Rezentes: And they would have the choice on the 1% or...

Mr. Rapozo: Well they don't have a choice because that's not a legal choice for them, it's not a legal option because it would be double taxation. I think that's what they're saying is you cannot give me a choice that is illegal.

Mr. Rezentes: Sure. Sure.

Mr. Rapozo: And that is what, because their scenario is different yes? Because they generate with oil, I mean with diesel and naphtha.

Mr. Rezentes: Yes. Yes.

Mr. Rapozo: All of these generating facilities really has no bearing. It's really, at the end of the day, what is being sold to the consumer?

Mr. Rezentes: I guess in my simple mind, the way I had envisioned is KIUC's for-profit entity would have a choice of paying, if the bill passes with amendments that's being discussed, they would have a choice of the percentage of gross, I believe the number right now is 1% or so, or go the assessment route. They would have those two choices.

Mr. Rapozo: Right. So you're saying that that Anahola Project would be carved out of the annual in lieu fee?

Mr. Rezentes: Right.

Mr. Rapozo: But is that spelled out anywhere?

Mr. Rezentes: No, no. Again, that's what we need clarification on from the attorneys whether, based on the law.

Mr. Rapozo: Right. We're on the same page. That's my concern. That's why I think it's very premature to pass this out today without the attorneys getting a look at that and figuring out what the language, to make sure that that parcel is carved out. Because then it would be...

Mr. Rezentes: Their for-profit revenues is carved out from the Public Service Company Tax calculation.

Mr. Rapozo: Thank you.

Mr. Rezendes: Yes.

Mr. Chang: Thank you Mr. Rapozo and thank you Mr. Rezendes. No further questions for Mr. Rezendes? I'm going to call the meeting back to order. Where we last left out Councilmember Vice Chair Yukimura had an amendment, Section 8, the ordinance upon its approval shall take effect retroactive to January 1, 2011.

Ms. Yukimura: We didn't vote on it.

Mr. Chang: Yes, and we did not vote, so I'm going to be calling for the vote.

The motion to amend Bill No. 2415, as amended herein, was then put, and unanimously carried.

Mr. Chang: Any discussion.

Ms. Yukimura: Mr. Chair, are you ready for a motion to defer?

Mr. Chang: Yes, but I was just, I wanted to ask if anybody had any discussion.

Ms. Yukimura: Okay.

Mr. Chang: If not, I just would like to say, and thank the Committee Members and the entire Council. This is pretty, in my opinion, pretty complex and I just want to thank everybody for their hard work and their time. I would also like to say something that I picked up upon today. Speaking to members out in the solar world and those that want energy here on this island of Kaua'i, we don't have any wind energy, we don't have any opportunities for geothermal, and right now these photovoltaic farms, people that I do talk to compliment the work that Mr. Bosshard has put forth. I want to thank him for his persistency and for educating us. Everybody that is exploring any type of photovoltaic farm or energy alternatives here on Kaua'i all have seen your project. There's many people that have been referred to your project to help them out with their project, so I believe you're going to be a pioneer for a good reason here on the island of Kaua'i once we can get everything together. So, I just want to take this opportunity to thank the Committee Members and we will continue on our work and get this out as quickly as possible. With that being said, it is my intention to defer this item. Can I get a motion to defer please?

Upon motion duly made by Councilmember Yukimura, seconded by Councilmember Kualii, and unanimously carried, Bill No. 2415, as amended herein, was deferred.

Respectfully submitted,



Ihilani C.J. Laureta
Secretary

APPROVED at the Committee Meeting held on December 7, 2011:



DICKIE CHANG, CHAIR, ECONOMIC DEVELOPMENT & RENEWABLE
ENERGY STRATEGIES COMMITTEE